

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1215 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

FELISIA G CRASTO

Versus

DIRECTOR OF EDUCATION

Appearance:

MS RANI ADVANI for Petitioner
MR VB GHARANIA for Respondent No. 1 and 2
MR SK JHAVERI for Respondent No. 3 and 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/08/1999

ORAL JUDGEMENT

1. The petitioner, a non-teaching employee of the respondents No.3 and 4, since retired, filed this petition in this court and praying for the following reliefs:

(A) protect the petitioner's service and restrain the respondents No. to 4 from terminating her services with the respondent No.4 institution, pending hearing and final disposal of this petition;

- (B) direct the respondents No.1 and 2 not to make any recovery from the petitioner, pending hearing and final disposal of this petition;
- (C) direct the respondents Nos. 1 and 2 to fix the petitioner's date of recognised service as of 12-6-1967 and to calculate all benefits from this date;
- (D) to direct the respondents No.1 and 2 to calculate and pay the increments due to the petitioner continuously from 1-1-1973;
- (E) specifically direct the respondent No.2 to allow and pay the increments due to the petitioner since 26-6-1980, pending hearing and final disposal of this petition;
- (F) direct the respondents Nos. 1 and 2 to count the petitioner's services as continuous and effective from the initial date of appointment as of 12-6-1967;
- (G) quash and set aside the order contained in the letters of respondent No.2 authority dated 17-12-1984, 24-6-1982 and 3-9-1982;
- (H) direct respondents No.1 and 2 to pay interest on the total amount due to the petitioner, since 26-6-1980;
- (I) direct respondents to pay the costs of this petition;
- (J) pass such other and further order as the nature and circumstances of the case may require;

2. The facts of the case, in brief, are that under the order of the respondent No.4 dated 6-7-1967 the petitioner was appointed as Typist Clerk w.e.f. 12-6-1967 in the pay scale of Rs.91-170. This appointment was subject to certain terms and conditions. This appointment was continued for some time but abruptly on 1-2-1976, the respondent No.4 at his end terminated her services. The petitioner approached to the Government of Gujarat where this order of the respondent No.4 was ordered to be kept in abeyance, meaning thereby, it was not given effect to and ultimately the Government has ruled that as and when the vacancy is available, the petitioner may be given the appointment as Clerk. It is

not in dispute that subsequently a vacancy was available and the petitioner was continued in service. She continued without any break in service. Then comes the order of the respondent-State officer under which she was given the pay scale of Rs.260-400 from 1-7-1978. There is no dispute between the parties that this pay scale given to the petitioner was not approved by the competent authority. It is also not in dispute that the petitioner continued to get her salary in the pay scale aforesaid though her basic pay was frozen at the stage of Rs.314/-.

3. The petitioner was not given the benefits of the pay scale prescribed for the post and revised from time to time on the ground that she was not qualified for the post as she was not possessing the qualifications of S.S.C..

4. It is the submission of the learned counsel for the petitioner that for the appointment to the post of Typist Clerk or Junior Clerk no qualification has been prescribed in the year 1967. She referred to Schedule accompanying to the Resolution of Government Education and Labour Department No. INS-1068-G dated 16th April, 1970 and contended that for the appointment on the post of Junior Clerk in the State, minimum qualification of S.S.C. was not required. The pay scale of Rs.91-170 was revised to Rs.130-240 subsequently.

5. On the other hand, the learned counsel for the respondent-institution contended that the petitioner was not possessing the minimum qualification of S.S.C and she is not entitled for the pay scale prescribed for Junior Clerk/ Typist Clerk. It is further contended that the institution has no objection in case she has been given the benefits of the pay scale but the financial burden should have been of the State Government. Lastly, it is contended by the counsel for the institution that the petitioner though at one point of time was given the pay scale of Rs.260-400 but that was only the decision which was never approved by the competent authority.

6. Shri Gharania has adopted the contentions raised by the counsel for the institution.

7. Learned counsel for the respondent-institution does not dispute that on 1-2-1976, the services of the petitioner were sought to be terminated on the ground that the post was not available. The respondent-institution further admits that the respondent No.3 was getting the grant in aid from the State Government. He further admits that the appointment has

been made of the petitioner in the pay scale of Rs.91-170. Shri Zaveri admits that the petitioner was continued in service upto 1-2-1976 and thereafter under the Government order she was continued and ultimately she was given the appointment on permanent post of Clerk which fall vacant due to retirement of incumbent thereof and she continued to work on that post till she attained the age of superannuation. She Zaveri states that this appointment of the petitioner second time was given as per the Government order.

From these admitted facts and the order of appointment of the petitioner dated 6-7-1967, I find that the contention of the learned counsel for the respondents that the minimum qualification for appointment on the post of Typist Clerk was S.S.C. is not correct. Learned counsel for the respondents though the court has repeatedly asked for to produce the relevant Rules or Government Resolution or Standing Order to show what were the minimum qualifications prescribed for appointment on the post of Typist Clerk, are unable to do so. The counsel for the petitioner makes reference to the Code of Secondary Education Grant in Aid to show that at the relevant time only eligibility for appointment on non-teaching post in the school was to have the minimum age of 18 years.

8. Shri Zaveri, learned counsel for the respondent -institution sought to draw a distinction in between the Clerk who is appointed in Secondary School and the Clerk who has been appointed in Primary section or in lower primary section. However, this distinction as sought to be drawn by Shri Zaveri is of no substance and in fact it does not stand to close scrutiny if we go by the respondent No.4's own document annexure 'A' dated 6-7-1967 under which the petitioner has been given the appointment on the post of Typist Clerk. If the minimum qualification for this post in the pay scale of Rs.91-170 would have been S.S.C. passed at the relevant time then how this appointment had been given to the petitioner. For this, the learned counsel for the respondents No.3 and 4 are unable to give any cogent and satisfactory explanation. As stated earlier, the counsel for the respondents have failed to show any provision under the Act, Rules, Resolutions or Standing Orders of the Government where S.S.C. is provided as a minimum qualification for appointment on the post of Clerk Typist at the relevant time.

9. The appointment order of the petitioner on the post of Typist Clerk reads as under:

To

Kum. Falicia Crasto

With reference to your application dated Nil. I have pleasure in informing you that you have been appointed as a Typist Clerk on Rs.91/- per month in the scale of Rs.91-3-130-E.B.4-170 with effect from 12th June, 1967. You will be given compensatory Local Allowance Nil. House Rent Allowance Nil. and Dearness Allowance as per rules per month.

2. Your appointment is purely temporary.
3. The condition of service are attached hereto.
4. If a reply accepting this appointment is not received within _____ days, the place will be filled up otherwise.

Date: 6-7-67 Yours faithfully,

sd/- illegible
Head of School,
Secretary of the
Management.

10. In the pay scale of Rs.91-170 this appointment has been made. The letter dated 29th April, 1970 of the Government of Gujarat, Education and Labour Department, Sachivalaya, Ahmedabad-15 addressed to the Direction of Education and all Education Inspectors has to be reproduced for ready reference, which reads as under:

To

The Director of Education, Ahmedabad,
All Educational Inspectors.
e.t.c..

THE SCHEDULE' ACCOMPANYING THE GOVERNMENT EDUCATION AND LABOUR DEPARTMENT NO. INS-1068-G DATED THE 16TH APRIL, 1970.

Sr. Designation Existing Pay Revised Pay
No. of the posts. Scales. Scales
Rs. Rs.

1. Junior Clerk 91-3-130-4-170 130-5-155- EB-7-
(Matriculate 190-EB-8-230-10-
higher start 240.

at Rs.100/-)

2. Senior Clerk 120-5-180 200-10-250-EB-12

310

3. Senior Clerk 145-8-185-10- 200-10-250-EB-12

215 310.

4. Peons 65-1-1/2-70 90-2-110

Revision of pay scales of Head Masters and teachers in
non-Government Secondary Schools on the recommendations
of the Sarela Pay Commission

Government of Gujarat,
Education and Labour
Department,
Sachivalaya, Ahmedabad 15
29th April, 1970.

Read:

(1) Government Resolution, Education and Labour
Department No.INS-1068-G dated the 14th November,
1969.

Letter No. SN- V-14 Gh dated 31st March, 1970 of
Director of Education, Ahmedabad.

From this Government letter, I find that for the post of
Junior Clerk the existing pay scale was Rs.91-170. The
bracketed portion to this pay scale is very relevant and
it gives complete answer to all the contentions raised by
the learned counsel for the respondents. From this
bracketed portion, it is clear that minimum qualification
for appointment on the post of Junior Clerk was not
S.S.C.. For matriculate candidate, higher start of
Rs.100/- has been provided.

11. Learned counsel for the respondents No.3 and 4,
at this stage, sought to raise a contention that
matriculate is different qualification than S.S.C. But
only oral submission is there, otherwise they could not
substantiate their this contention by producing any
relevant resolution or the Act or Rule of University or
any Government Resolution and/or Standing order or
circular in this respect. Matriculate was the
examination earlier which may be taken by the University
but it was X standard examination earlier and what is
S.S.C. also. Matriculate appears to be now named and/or

title as S.S.C.. The minimum qualification in case for this post would have been matriculate/S.S.C. it would not have been provided higher start in the pay scale of Rs.91-170 for matriculate. This clinches the issue and makes it clear that matriculate/S.S.C. was not the minimum qualification for appointment on the post of Junior Clerk/ Typist Clerk. This is a case where unnecessarily this poor lady, a low paid employee, has been dragged into litigation and she was deprived of both the benefits of the post and the pay scale. The action of the respondents to treat her not qualified for the post of Typist Clerk and not to give her the benefits of pay scale of this post as revised from time to time is wholly arbitrary and unjustified. Moreover, no reason has been given by the respondents that in case she was not qualified for this post how she has been given the benefit of pay scale of Rs.260-400. It is different matter that this benefit has been given and ultimately audit team could have raised some objection. The substance and not the form is to be considered and if we go by it then certainly it is a case where the petitioner has unnecessarily been harassed by none other than a welfare State and its officers. In such matters, the approach of the respondent should have been as a model employer. The petitioner was appointed on 12-6-67 on which date she was possessing the requisite qualification for the post of Typist Clerk. She has been appointed in the pay scale of Typist Clerk though it could have been a temporary appointment. Her services from the said date are to be counted towards the qualifying services for determination of the pension and other retiral benefits, grade increments, higher pay scale benefits etc..

12. In the result, this special civil application succeeds and the same is allowed and the respondents are directed to give the petitioner the benefit of the pay scale of Rs.260-400 w.e.f. 1-1-73 and further benefit of revision of this pay scale as and when the same is revised and given effect to. The petitioner had attained the age of superannuation and her pension and other retiral benefits, if she is entitled for pension and D.C.R.G., accordingly be determined and fixed. The arrears of revised pay in the revised pay scale, the arrears of pension and the amount of all other retiral benefits have to be determined and paid to her within a period of three months from the date of receipt of writ of this order. For the purpose of giving her yearly grade increments and fixation of pension and the retiral benefits, for which she is entitled, her services are to be taken and/or counted from 12-7-67. The respondents are directed to pay the petitioner, interest on the

arrears of fixation of revised pay scale as well as on the arrears of pension and the amount of other retiral benefits at the rate of 12 % per annum from the due date. This amount has to be calculated and paid along with the arrears of fixation of revised pay and arrears of pension and the amount of all other retiral benefits.

13. It is a case where the low paid employee has unnecessarily been dragged into litigation and the lady has to incur the expenses of litigation. It is different matter that Ms. Rani Advani, advocate appearing for the petitioner stated that she has not charged anything from the petitioner towards her professional fees. She has not charged for the reason that the petitioner was not in a position to pay her but I find it to be a case where the petitioner is entitled for litigation expenses. Even if she has not paid the fees, she would have incurred the expenses of filing of the special civil application and other expenses to come to Ahmedabad from time to time for attending this case or counselling with her advocate or for drafting of the petition etc. and she would have spent heavy amount. It is not the case of the counsel for the petitioner that she has even not charged the amount of expenses of filing of the petition from the petitioner.

14. Taking into consideration the totality of the facts of this case, the respondent - State of Gujarat is directed to pay Rs.2000/- as costs of this litigation to the petitioner as she has unnecessarily been harassed and deprived of the benefit of the revision of pay scales etc.. Rule is made absolute in the aforesaid terms.
